EDITOR'S NOTE

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87-1236

Supreme Court, U.S.
F I L E D
DEC 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STSTES

OCTOBER TERM, 1988

ALBERT E. NASSER, ALBERT E. NASSER, trustee of the ALBERT E. NASSER AND MARY E. NASSER FAMILY TRUST, SELMA WOLF and JACK WOLF,

Petitioners,

v.

FEDERAL HOME LOAN BANK BOARD, an agency of the UNITED STATES, HOUSEHOLD FINANCE CORPORATION, a corporation, HOUSEHOLD FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation, EDWIN GRAY, DONALD HOVDE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

Albert E. Nasser,
Selma Wolf, Jack
Wolf
16 Morena
Irvine, Ca 92715
(714) 786-8708
Pro se

45pp

QUESTIONS PRESENTED

1. Is petitioners' challenge to reorganization of federal savings and loan which was tainted by fiduciary fraud of Federal Home Loan Bank Board and majority stockholder moot?

2. Is restitution of petitioners' stock from majority stockholder who gained 100% control in fraud tainted reorganization of federal savings and loan moot?

3. Whether petitioners have standing as private attorney general in the herein case to vindicate their interest and the public interest in compliance with federal regulations ignored by Federal Home Loan Bank Board in fraud tainted reorganization of federal savings and loan

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners, above named, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The unpublished opinion of the Court of Appeals appears in the Appendix.

JURISDICTION

This action was brought pursuant to the Fifth Amendment to the United States Constitution, 28 USC 1331, 2201 and 2202, 12 USC30a, 5 USC 702 and 706, 12 CFR 552. 13, 571.5 and 584.4. The judgment of the District Court was entered dismissing the complaint against the corporate defendants was entered June 7, 1985 and judgment for the federal defendant was entered February 13, 1986. Notice of Appeal was timely filed in the Court of Appeals for the Ninth Circuit. The judgment of said court was filed July 22, 1987, a timely petition for rehearing was denied September 2, 1987, and the herein petition filed within 90 days thereof. This court's jurisdiction is based on 28 USC 1254 (1) which provides:

> "Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

STATUTES AND REGULATIONS

Statutes

Petitioners' case involves the following statutes:

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Regulations

Petitioners' case involves the following regulations:

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STATEMENT OF THE CASE

A. Digest Of The Case

Petitioners ("Nasser-Wolf"), former minority stockholders of Household Federal Savings and Loan Association ("HFS&L"), challenged Federal Home Loan Bank Board and its members' ("Bank Board") approval of Household Finance Corporation's ("Finance") reorganization of HFS&L, in which it held 99.89% of the stock, on the ground that Nasser-Wolf were deprived of their 0.1% stock interest illegally and by fraud in violation of the constitutional process due them, the applicable notice and fairness provisions of Bank Board regulations and case law. The crux of the case is fraud.

1. The Fraud.

Finance, HFS&L and Bank Board knew in June 1982 that Finance's reorganization was devised to oust Nasser-Wolf (Admin. Record 15-16):

1. Organize a phantom and a holding Company.
2. Merge the phantom into HFS&L.
3. Merge the holding company into Finance.

Each respondent was a fiduciary who concealed

their true goal from Nasser-Wolf. In so doing they abused the public trust. Thus:

Notice of Special Shareholders Meeting dated October 29, 1982 stated in pertinent part:

> "The purpose of said special meeting shall be to vote upon a merger in which a federal interim association HFC Subsidiary Federal Savings and Loan Association, which is being formed will, after appropriate regulatory approval and completion of its organization, be merged into Household Federal Savings and Loan Association. By such merger all shareholders of Household Federal Savings and Loan Association will become shareholders in amounts proportionate to their current ownership of this Association of a holding company that will own all of the shares of stock of Household Federal Savings and Loan Association."

On October 25, 1982 first notice to the people of Orange County was published in the Register, the County's leading newspaper. The item stated in pertinent part:

> "As a consequence of the merger, all current shareholders of Household Federal Savings and Loan Association will become shareholders of a holding company that will own all of the shares of stock of Household Federal Savings and Loan Association."

The published notice also stated that anyone could write in favor or protest of the merger to the Board's supervisory agent but must do so by November 12, 1982.

On November 1, 1982 the same public notice to the people of Orange County was again published in the Register. Appendix at p.__ , (AR 97)

No member of the public-at-large protested. Nasser-Wolf neither knew of, nor were they informed of, the public notice nor of their right to protest and they did not protest.

The total absence of protest may be explained by the fraudulent concealment of the true facts (the elimination of Nasser-Wolf) by the corporate respondents. The fraudulent concealment was compounded by the failure of such respondents to give Nasser-Wolf the notice mandated by 12 CFR 552.13(h)(3)(1982) which stated:

See Appendix C

The Bank Board breached its fiduciary duty owed to Nasser-Wolf as imposed on it by 12 CFR 571.5(d)(1) and (2) and thereby condoned the fraudulent concealment of Finance and HFS&L. The regulation stated:

See Appendix D

The Bank Board again breached the said fiduciary duty it owed to Nasser-Wolf when it ignored the failure of Finance and HFS&L

to give petitioners the notice mandated by 12 CFR 552.13(h)(3) (1982).

The Bank Board again breached the fiduciary duty it owed to Nasser-Wolf when it failed to require republication of the public notice because the corporate respondents had failed to give the notice required by the regulations to Nasser-Wolf and because said respondents had withheld from the public notice that the third step in the merger plan would eliminate small shareholders like Nasser-Wolf and leave one shareholder, Finance, with 100% control of the local savings institution, HFS&L. The regulation that required republication, 12 CFR 552.13(h)(4) (1982) provided:

See Appendix C

The special meeting of shareholders of HFS&L was held on November 19, 1982, which was a week after the last day to file protest with the Bank Board.

Nasser-Wolf, by Nasser, came to the said meeting knowing only that Nasser-Wolfs' stock would merely be shifted from HFS&L to a holding company. This shifting of stock was affirmed at the meeting. No mention was made of the final step in the merger plan until just before a vote was taken when the fraudulent concealment was discovered by interrogation as follows:

Nasser: "What happens then (after the current shareholders become shareholders in HFC Corporation, the holding company)?"

Staff Counsel: "HFC Corporation will be merged into Finance."

Nasser: "We will become shareholders in Finance then?"

Staff Counsel: "No. You will be cashed out."

The vote on the merger proposal was then taken. Nasser-Wolf cast their votes against the proposal, Finance voted for it.

Over three months earlier, the Bank Board wrote Finance that its proposed reorganization was exempted by 12 CFR 584.4(b)(2) of the Regulations for Saving And Loan Holding Companies from Federal Savings and Loan Corporation ("FSLIC") scrutiny. Administrative Record p. 84. The exemption was not disclosed to Nasser-Wolf.

On December 27, 1982 the Board issued its resolutions No. 82-875, which approved organizing HFC Subsidiary Federal Savings and Loan Association. Resolution No. 82-876 stated that the Board had determined that the application ". . . may be approved pursuant to the provisions of Section 552. 13 of the Rules and Regulations for the Federal Savings and Loan System. . ." (AR 2-3). It then approved the merger of HFS&L and the said subsidiary. In fact,

Finance and HFS&L had violated 12 CFR 551. 13 when they failed to give Nasser-Wolf the mandatory notice of 12 CFR 551.13(h)(3).

On January 26, 1983 Nasser-Wolf petitioned for direct review of the Bank Board's resolutions under 12 USC 1730a(k) on the ground that Finance was a savings and loan holding company subject to FSLIC regulation under 12 USC 1730a(a)(1)(D) and (e)(1)-(A)-(i)-(ii) which had failed to afford Nasser-Wolf the constitutional and regulatory process due. A February 4, 1983 request to the Bank Board for stay was ignored. Their motion for stay by the Court of appeal submitted on or about March 16, 1983 was denied May 10, 1983. A March 25, 1983 HFS&L motion to file an amicus curiae brief was granted. A March 31, 1983 Nasser-Wolf motion to add FSLIC as a respondent to the case versus the Bank Board was ultimately denied. See Nasser v. Federal Home Loan Bank Board, 723 F.2d 1437 (9th Cir. 1984) cert. den. Oct. 2, 1984; case dismissed for lack of

jurisdiction absent any FSLIC order and transaction was exempted therefrom by 12 USC 1730a(e)(1)(B)(ii); jurisdiction asserted under fifth amendment to the United States Constitution and 5 USC 702 would have to originate in district court 28 USC 1331; Nasser v. FHLBB at p. 1439.

Nasser-Wolf then filed suit in district court.

B. District Court Action

Jurisidiction in the district court was based on the 5th Amendment to the United States Constitution, 28 USC 1331, 2201 and 2202, 12 USC 1730a, 5 USC 702 and 706, 12 CFR 552.13, 571.5 and 584.4 (See Appendix)

The complaint was filed February 5, 1985.

Respondent Bank Board is an agency of the United States government. Edwin Gray and Donald Hovde were the chairman and member of the Bank Board. The Bank Board is responsible for the organization, supervision and regulation of federally chartered savings and loans. 12 USC 1464(a). It is

authorized to charter federal associations and approve merger applications for same. 12 CFR parts 543-546; 12 CFR 552.13. FSLIC is an agency of the United States operated and directed by Bank Board. 12 USC 1437(b), 1725, 1730(k)(1). It insures accounts and registers, examines and regulates savings and loan holding companies. 12 USC 1724 et seq and 12 USC 1730a.

Finance, a Delaware corporation, sited in Illinois and a savings and loan holding company got control of Keystone Savings (now HFS&L) in 1976. Nasser-Wolf were longtime Keystone stockholders. Finance was the architect of the reorganization which raised its stock holdings from 99.89% to 100%, eliminated Nasser-Wolf, compromised the Bank Board and triggered this litigation.

The complaint's first count to hold illegal Bank Board approval of Finance's reorganization charged the FSLIC exemption violated 12 USC 1730a(a)(1)(D) and (1)(A)(i)-(ii) since Finance was a holding

company, charged all respondents violated the process due of notice and hearing by virtue of the 5th amendment to the United States Constitution and 12 CFR 552.13(h)(3); charged all respondents violated the fiduciary duty imposed by 12 CFR 552.13(g), 571.5(d) and (d)(1) and related duties of fairness and equity at a time of distress within the saving and loan industry, subjected Nasser-Wolf to tax and other liabilities, deprived them of valuable rights enjoyed by Finance and limited Nasser-Wolf to assert dissenter rights in a distant forum. (CR 1). See Appendix for statutes and the regulations, in effect in 1982.

The second count of the complaint incorporated the first count and charged the corporate respondents with fiduciary fraud. (CR 1).

The third count of the complaint incorporated the first count and charged the corporate respondents with fraud. (CR 1). Nasser-Wolf sought declaratory

relief, restoration of stock and, against the corporate respondents, damages. (CR 1).

In June of 1985 the district court dismissed the second and third counts of the complaint and in February of 1986 granted the Bank Board summary judgment. (CR 31). Timely notice of appeal was filed (CR 33).

REASONS FOR GRANTING THE WRIT

1. THIS CASE PRESENTS A CLEAR CHOICE BETWEEN THE RULE OF LAW AND LAWLESSNESS WHICH SHOULD BE DECIDED BY THIS COURT.

Either the Bank Board and the corporate respondents must obey regulatory laws promulgated for the protection of stockholders and the public in an industry placed in a unique position of public trust or be held unaccountable and above the law.

The savings and loan industry is in the midst of a severe time of trouble and distress. The FSLIC is embattled as it

attempts to cope with a flood of failures and insolvencies. The Garn - St. Germain Depository Institutions Act of 1982, P.L. 97-320, page 96 Stat. 1469 documented the crisis (Appendix) shortly before the first complaint was filed herein. The Act documents the 'wave' of merger applications to FSLIC. Public trust and confidence is at risk.

Nasser-Wolf's case presents one small merger application exempted by the Bank Board acting for the FSLIC from any scrutiny by anyone. Neither stockholders, except for Nasser-Wolf, nor the public nor the courts below have challenged the tip of this iceberg where blindness to regulations and fiduciry fraud is frozen forever in icey darkness. Only this court can apply the heat of rectitude to achieve "meltdown" as a reminder to Bank Board and merger applicants, herein and those yet to apply, that laws and regulations must be obeyed; that fiduciaries must disclose.

The Court of Appeal held the case was moot because Finance's corporate creations,

"HFC, the subsidiary Illinois corporation, and HFC Subsidiary Federal Savings and Loan Association, the interim corporation, are no longer in existence". Op. p. 6. The Court of Appeal then stated in its opinion that ". . . the cashing out of the minority shares under Illinois law were completed before Nasser-Wolf filed their complaint." (Op. p. 6). In their petition for rehearing Nasser-Wolf pointed out that their first complaint was filed January 26, 1983 at a time when no steps had been taken to implement Finance's reorganization and that their request for stay preceded the reorganization, facts of which respondents were aware.

A. The Case Is Not Moot.

The case is not moot for several reasons. Nasser-Wolf's discovery of Finances' fraudulent concealment was made at the meeting of November 19, 1982 and the breach of fiduciary duty by the Bank Board was not discovered till after the first complaint was filed on January 26, 1983. Both dates are within the three

year statute of limitations for fraud. See Vaughn v. Teledyne, Inc., 628 F.2d 1214 at 1219 (9th Cir. 1980) holding that three year statute applied to action for directors' misrepresentation.

ser-Wolf ask this court to impose upon the herein respondents "...a fiduciary and affirmative duty of 'utmost good faith and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading ...'" S.E.C. v. Capital Gains Bureau, Inc., 375 U.S. 180, 194 (1963). The duty imposed on respondents by 12 CFR 571.5(d) and (d)(1) is as strict. The breach of trust of the investment advisor in the cited case, which the Supreme Court called fraud, included:

". . . all acts, ommissions or concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another." S.E.C., supra, 375 U.S. at page 194.

The breaches of trust in Nasser-Wolf's case involved just such acts and omissions and are likewise fraud.

The Bank Board's conduct in the instant case was governed by statutes and regulations having continuing effect and strong impact on private and public interest. The Bank Board is charged by Nasser-Wolf with clear violations of cited statutes and regulations. This court has held, and Nasser-Wolf ask it to hold, that such violations are not moot under the following precedents:

National Labor Relations Board v. Raytheon Co., 398 US 25 in which it was held that Board orders and their enforcement are not mooted by subsequent events. As here the Bank Board, like the NLRB has primary responsibility for the public interest to insure future, lawful conduct.

National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., 303 U.S. 261. is to the same effect.

So here. Bank Board regulations do not become moot becaus hey are not obeyed.

Moreover, Finance the tortfeasor, is before the Court and restitution can be granted to restore Nasser-Wolf's stock.

See Citronelle-Mobile Gathering, Inc., v. Edwards, 699 F.2d 717 at 721-722. (Temp. C.A, 1980)

Unless this petition for writ of certiorari is granted the respondents will have succeeded in holding themselves above the law. This should not be.

Respectfully submitted,

Albert E. Nasser, Albert E. Nasser, trustee of the Albert E. Nasser and Mary E. Nasser Family Trust, Selma Wolf and Jack Wolf,
Pro se

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. FILED JULY 22 1987 * Appeal from the United States District Court for the Central District of California, Consuelo B. Marshal, District Judge, Presiding. Argued and submitted January 9, 1987. Before: Kennedy and O' Scannlain, Circuit Judges, and Wilkins District Judge.

Albert E. Nasser, Albert E. Nasser, trustee of the Albert E. and Mary E. Nasser Family Trust, Selma Wolf and Jack Wolf (Nasser-Wolf) appeal from dismissal of their complaint against defendants Household Finance Corporation (Household Finance) and Household Federal Savings and Loan Association (Household Federal) and from summary judgment entered in favor of defendants Federal Home Loan Bank Board (Bank Board), and Edwin Gray and Donald Hovde, members of the Bank Board. We affirm the dismissal of the corporate defendants, and remand to the

*This disposition is not intended for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

district court with directions to vacate the summary judgment in favor of the federal defendants and to dismiss all claims against the federal defendants as moot.

BACKGROUND

Appellants were holders of 0.1% of the stock of appellee Household Federal, a California savings and loan association regulated by appellee Bank Board, a federal agency responsible for the organization, supervision, and regulation of federally chartered savings and loan associations. The Bank Board also operates and directs the Federal Savings and Loan Insurance Corporation (FSLIC), a federal agency responsible for registering, examining, and regulating savings and loan holding companies. Appellee Household Finance is a savings and loan holding company incorporated in Delaware.

Household Finance acquired control of Household Federal in 1976, and by 1982 Household Finance had held more than 99% of the shares of Household Federal for

over three years. In June 1982, Household Finance proposed to reorganize in order to obtain 100% of the shares of Household Federal by cashing out three minority shareholders, including Nasser-Wolf.

Before initiating the reorganization process, Household Finance requested and obtained from the Bank Board an exemption from prior FSLIC approval for the proposed merger. Such exemption was granted pursuant to the Federal Savings and Loan Holding Company Act, 12 U.S.C. § 1730a(e)(1)(B)(ii), providing that the reorganization vests control with the same group of persons that held control for more than three years preceding the merger.

In October, 1982, Household Federal notified shareholders, including appellants Nasser-Wolf, that a shareholders' meeting would be held to vote on the proposed merger of Household Federal with an interim corporation. At that meeting, held on November 19,

1982, appellants learned for the first time of the eventual reorganization plan. Appellants also learned for the first time that their shares would be cashed out if the reorganization attempt was successful. The reorganization plan was approved by 99.97% of the voting stock, with appellants dissenting. The Bank Board chartered the interim association and approved the merger in December, 1982.

The reorganization was accomplished in several steps, First, two new subsidiaries were created: HFC Corporation (HFC), an Illinois corporation, and HFC Subsidiary Federal Savings and Loan Association, an interim association. The interim association then merged with Household Federal, with Bank Board approval, and HFC acquired control of the merged entity, also with Bank Board approval, through an exchange of stock in Household Federal for a share of stock in HFC. Under the last step of the reorganization, HFC was merged into its

parent, Household Finance, the transaction that cashed out Nasser-Wolf's minority shares. Because HFC was an Illinois corporation, this merger was not subject to Bank Board Approval. All of these steps were completed before Nasser-Wolf filed the present lawsuit.

In June 1983, Nasser-Wolf[1] filed a petition in this court to review the Bank Board's approval resolutions concerning the reorganization. Nasser-Wolf's claim was based on 12 U.S.C. 1730a(k), which provides for direct appellate review of an order of the FSLIC. This court dismissed the appeal for lack of jurisdiction, noting that no order of the action of the FSLIC was implicated in the events leading up to the reorganization. Nasser v. Federal Home Loan Bank Board, 723 F.2d 1437 (9th Cir.), cert. denied, 469 U.S. 836 (1984).

Nasser-Wolf then filed the present case in district court, seeking to set aside Bank Board approval of the merger, to recover their

[1] In their petition for rehearing they noted that the actual date of filing was January 26, 1983.

shares in Household Federal, and for compensatory and punitive damages from Household Finance and Household Federal. The complaint contained three claims for relief, alleging: (1) that the Bank Board's approval of the reorganization violated technical notice and constitutional due process requirements:[2] (2) that Household Finance and Household Federal breached fiduciary duties owed to Nasser-Wolf; and (3) that Household Finance and Household Federal committed fraud.

On June 3, 1985, the district court dismissed claims two and three against the corporate defendants for lack of subject matter jurisdiction. On February 4, 1986 the district court granted summary judgment in favor of the federal defendants on claim one, Nasser-Wolf's timely appeal followed.

We raised sua sponte the issue of mootness at oral argument, and issued an order requesting supplemental briefing on the question of

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[2] The complaint charged the Bank Board also violated 12 C.F.R. 571.5(d), which required Bank Board oversight for fairness and disclosure.

whether or not this case is moot by reason of the completion of the organization which appellants seek to attack.

STANDARD OF REVIEW

Both the issue of mootness raised by this court and the dismissal of the second and third claims for relief against the corporate defendants raise the question of subject matter jurisdiction. The existence of subject matter jurisdiction is a question of law, reviewable de novo by this court. Peter Starr Production Co. v. Twin Continental Films, Inc., 783 F.2d 1440, 1442 (9th Cir. 1986).

DISCUSSION

A. MOOTNESS

Because the issue of mootness raises the question of subject matter jurisdiction, it must be resolved before turning to the other contentions of the parties. If the claim against the federal defendants was moot when filed, the district court lacked subject matter jurisdiction and should have dismissed

it without consideration of the merits.

In their first claim for relief, Nasser-Wolf sought under the Administrative Procedure Act, 5 U.S.C. § 701 et seq., to set aside the approval of the reorganization by the Bank Board and to restore their stock interest in Household Federal. We hold that neither the district court nor this court has the power to grant this relief under Article III of the Constitution and the doctrine of mootness.

The exercise of judicial power under Article III of the Constitution requires the existence of a case or controversy, and a federal court lacks the power to render advisory opinions or to decide questions that cannot affect the rights of litigants in the case before them. Preiser v. Newkirk, 422 U.S. 395, 401 (1975).

Both HFC, the subsidiary Illinois corporation, and HFC Subsidiary Federal Savings and Loan Association, the interim corporation are no longer in existence. The final step

in the reorganization process, the completion of the Illinois merger, has rendered the claims against the Bank Board and its members moot. Both of the approvals by the Bank Board, the merger of HFC into Household Finance, and the cashing out of the minority shares under Illinois law were completed before Nasser-Wolf filed their complaint. We could not grant any effective relief against the federal defendants even if we decided in favor of the appellants. In this situation the claims against the Bank Board and its members are moot. See In re Combined Metals Reduction Co., 557 F.2d 179, 186-191 (9th Cir. 1977).

Because mootness is jurisdictional and a threshold question, we believe that the first claim for relief should have been dismissed on that ground rather than the reasons stated by the district court.

B. THE CLAIMS AGAINST THE CORPORATE DEFENDANTS

The second and third claims based on breach of fiduciary and fraud against defendants

Household Federal and Household Finance seek damages and are not moot. The district court dismissed these claims for lack of subject matter jurisdiction, and we agree. These claims are based on state rather than federal law, and complete diversity of citizenship is lacking between the parties.

Appellants contend that the district court should have exercised jurisdiction over the state claims against the corporate defendants under the doctrine of pendent jurisdiction. However, in view of our holding that there was no subject matter jurisdiction over the federal claim, there is clearly no basis for exercising pendent jurisdiction over the state claims. Moreover, pendent party jurisdiction has not been adopted by this circuit. Ayala v. United States, 550 F.2d 1196, 1198-1200 (9th Cir.), cert. dismissed, 435 U.S. 982 (1977). An independent ground for federal subject matter jurisdiction must exist as to each party joined in the action.

The dismissal of Household Finance and Household Federal is AFFIRMED. With respect to the federal defendants, we vacate the summary judgment order and remand the case to the district court with instructions to dismiss as moot.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. FILED SEP 2, 1987

Before: KENNEDY and O'SCANNLAIN, Circuit Judges, and WILKINS*, District Judge.

The petition for rehearing is DENIED.

*Honorable Philip C. Wilkins, Senior U.S. District Judge for the Eastern District of California, sitting by designation.

The Register

PROOF OF PUBLICATION

(2015.5 C.C.P.)

STATE OF CALIFORNIA,
County of Orange, } ss.

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of The Register, a newspaper of general circulation, published in the City of Santa Ana, County of Orange, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Orange, State of California, under the date of November 29, 1905, Case Number A21046; that the notice of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

Oct. 25, Nov. 1, 1982

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed at Santa Ana, California.

Date Nov. 1 1982

Signature

Phyllis J. MacWillie - Legals

OSP 165

LEGAL NOTICE

B-1262
NOTICE OF FILING OF APPLICATION TO ORGANIZE AND FOR MERGER

This is to inform the public that, under Sections 543.3 and 552.13 of the Rules of the Federal Home Loan Bank Board, an application has been filed with the Federal Home Loan Bank Board to form HPC Subsidiary Federal Savings and Loan Association (In Organization), Westminster, California, as an interim federal association, and that Household Federal Savings and Loan Association, Westminster, California has filed an application with the Federal Home Loan Bank Board for permission to merge with the newly formed HPC Subsidiary Federal Savings and Loan Association (In Organization) following its organization. Household Federal Savings and Loan Association to be the resulting association, operating under the same name. The resulting association will have its home office at 14951 Beach Boulevard, Westminster, California, and will maintain all of the present branch offices of the merging associations. As a consequence of the merger, all current shareholders of Household Federal Savings and Loan Association will become shareholders of a holding company that will own all of the shares of stock of Household Federal Savings and Loan Association.

Anyone may write in support or opposition of the application. Your comments may discuss, but are not limited to, the applicants' record of performance in helping to meet the credit needs of their local communities. Four copies must be received by "Supervisory Agent, Federal Home Loan Bank of San Francisco, 600 California Street, Post Office Box 7948, San Francisco, California 94120," by November 12, 1982. An additional 30 days to submit comments may be obtained, provided such request is received in writing by the Supervisory Agent by November 12, 1982.

Anyone making a substantial protest may request an oral argument on the questions as set forth in Section 545.31(f) of the Rules and Regulations for the Federal Savings and Loan System. For a protest to be considered substantial, it must be written, received on time, and contain at least the following: (1) a summary of the reasons for the protest; (2) the specific matters objected to in the application or in the applicants' community service record; (3) facts, including any relevant economic or financial information, which support the protest; and (4) any adverse effects on your organization or community which may result from approval of the application.

You may look at the application and all comments filed at the Federal Home Loan Bank of San Francisco, unless any such materials are exempt by law from public disclosure. If you have any questions concerning these procedures, contact the Supervisory Agent at the Federal Home Loan Bank of San Francisco.

Publish: Oct. 25, Nov. 1, 1982

PROOF OF PUBLICAT

LEGISLATIVE HISTORY
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During the period January 1, 1981 through July 30, 1982, 26 commercial banks and 9 mutual savings banks were closed by the FDIC because of financial difficulties. Although only 4 of these necessitated direct payment of insured deposits by the FDIC, the total cost of FDIC assistance in these 35 instances has been $1.7 billion. If 1981 losses for savings banks continue, by the end of 1983, 16 savings banks (with $21 billion in assets) will have negative net worth, and 42 savings banks (with $34 billion in assets) will have net worth between 0 and 3 percent. While the FDIC fund exceeds $13 billion in assets and its annual income is approxiatley $2 billion, the importance of preserving the fund's resources is obvious from the significant cost of assistance already committed to distressed institutions.

The FSLIC has processed a wave of merger applications from savings and loan associations attempting to strengthen their operations and improve operational efficiencies, as well as an increasing number of applications regarding distressed savings and loan associations, during the past year and a half. In 1981, 328 savings and loans disappeared as a result of voluntary merger transactions and, from January through July 20 of this year, another 281 savings and loans were voluntarily merged out of existence.

Since 1981, when savings and loan associations had an aggregate net worth of $32.2 billion, their earnings decline and losses resulted in an industry net worth of $24.7 billion as of June 30, 1982. As of that date, there were 1,055 savings and loan associations (with $270 billion in assets) with net worth of 3 percent or less, and 223 of those associations (with $40 billion in assets) had net worth of less than 1 percent. Using an interest rate scenario based on a Treasury bill rate of 9½ percent, the FHLBB has projected that there will be 1,110 associations with 3 percent or less net worth by the end of 1982, with 264 of those associations with 1 percent or less net worth. Using a 13½ percent Treasuary bill rate scenario, there will be 1,511 associations with 3 percent or less net worth by the end of this year, with 471 of those associations with 1 percent or less net worth.

During 1981, there were 61 supervisory mergers arranged by FSLIC, with 23 of that number requiring some form of FSLIC assistance. From January 1 through July 20 of this year, there were 105 supervisory mergers, 16 of which required assistance. The total cost of FSLIC assistance during the past eighteen months has been approximatley $1.5 billion. FSLIC's fund has $7 billion in assets and its annual income is just over $1 billion.

With respect to credit unions, there have been 86 insured credit unions liquidated and 248 mergers from January 1, 1982 to June 30, 1982, and NCUA has incurred costs of $6.7 million in such situations. The Committee expects that the NCUA will be faced with continued liquidation and merger activity and recognizes the urgent need for further flexibility to facilitate mergers and purchase and assumptions. Additional flexibility is also needed in order to give the NCUA the important option of exercising conservatoryship when necessary to prevent losses of credit union assets, therby providing further protection to the NCUA Share Insurance Fund.

5 U.S.C. § 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought. Pub.L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub.L. 94–574, § 1, Oct. 21, 1976, 90 Stat. 2721

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

Pub.L. 89–554, Sept. 6, 1966, 80 Stat. 393.

12 U.S.C. 1730a

(a)(1) As used in this section, unless the context otherwise requires -

(D) "savings and loan holding company" means an company which directly or indirectly controls an insured institution or controls any other company which is a savings and loan holding company by virtue of this subsection.

12 U.S.C 1730a

(e)(1) It shall be unlawful for-

(A) any savings and loan holding company directly or indirectly, or through one or more subsidiaries or through one or more transactions -

(i) to acquire, except with the prior written approval of the Corporation, the control of an insured institution or a savings and loan holding company, or to retain the control of such and institution or holding company acquired or retained in violation of this section as heretofore or hereafter in effect;

(ii) to acquire, except with the prior written approval of the Corporation, by the process of merger, consolidation, or purchase of assets, another insured or uninsured institution or a savings and loan holding company, or all or substantially all of the assets of any such institution or holding company;

12 U.S.C. 1730a

(e)(1) It shall be unlawful for-

(B) any other company, without the prior written approval of the Corporation, directly or indirectly, or through one or more subsidiaries or through one or more transactions to acquire the control of one or more insured institutions, except that such approval shall not be required in connection with the control of an insured institution

(ii) acquired in connection with a reorganization in which a person or group of persons, having had control of an insured institution for more than three years, vestscontrol of that institution in a newly formed holding company subject to the control of the same person or group of persons.

12 C.F.R. § 552.13 (h)(1),(3),(4)

(h) *Notice*—(1) *Publication of Notice.* Constituent associations shall jointly publish notice within 15 days of filing an application with the Board. Notice shall be published on the same day of each of two consecutive weeks in a newspaper printed in the English language and having a general circulation in the community or communities served by the constituent associations. If the Supervisory Agent determines that the primary language of a significant number of the adult residents of the community is a language other than English, she/he may require that notice also be given in the appropriate language(s). The notice shall include: (i) A statement that an application under this section has been filed with the Board; (ii) the name and address of the home or principal office of each constituent association; (iii) a brief summary of the principal terms of the combination agreement; (iv) the name and address of the home office of the resulting association; (v) a statement as to which officers of constituent associations are to be maintained as home office or branches and which are to be discontinued; (vi) a statement that any person may file written comments concerning the application which will be considered by the Board if filed with the Office of the Principal Supervisory Agent and the Office of the Secretary (with addresses disclosed) within 10 days (or within 30 days if advice is filed within the first 10 days stating that more time is needed to furnish additional information) of publication or such later date as may be permitted by the Office of the Principal Supervisory Agent; and (vii) a statement that the application and all comments filed pursuant to the notice shall be available for public inspection by any person at the above offices, except for any material exempt from disclosure pursuant to the Freedom of Information Act. Promptly after publication of the notice, the constituent associations shall jointly file with the Board two copies of the notice and publisher's affidavit of publication.

(2) *Notice to State officials and other interested persons.* The Supervisory Agent shall give notice of the application to the State official who supervises savings and loan associations in the State in which the constituent associations are located, and to persons whose requests for announcements under § 563e.6 of the Rules and Regulations for Insurance of Accounts have been received in time for such notification; these notices shall be in addition to legal notification as set forth in paragraph (h)(1) of this section. The Supervisory Agent may also give notice to any other persons she/he believes might have an interest in the application.

(3) *Notice to stockholders.* In addition to publication, constituent Charter S associations shall mail notice of the filing of applications to stockholders within ten days of filing. The contents of such notice shall include the information prescribed by paragraph (h)(1) of this section.

(4) *Republication.* In the event of a determination by the Board's Office of the General Counsel that at the time notice was published the application was materially incomplete, each constituent association shall, in accordance with the directions of that Office, republish or redeliver such notice.

§ 552.13

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(g) *Application for Board approval.* (1) *Contents.* Applications shall be in a form prescribed by the Board and shall include appropriate information regarding fairness and legal, economic, managerial, financial, disclosure, accounting, and tax aspects of the combination.

12 CFR § 571.5 (d),(1),(2)

(d) *Factors relating to fairness and disclosure of the plan.* The Board will review the fairness and disclosure of a merger proposal on the basis of the following criteria:

(1) *Equitable.* The plan should be equitable to all concerned—savings account holders, borrowers, creditors and stockholders (if any) of each institution. The plan should properly recognize and protect their respective legal rights and interests. The plan will be particularly scrutinized for fairness where the merger does not appear to be the result of arms length bargaining or, in the case of a stock institution, where controlling stockholders are receiving different consideration from other stockholders.

(2) *Full disclosure.* The application should make full disclosure of all written or oral agreements or understandings by which any person or company will receive, directly or indirectly, any money, property, service, release of pledges made, or other thing of value, whether tangible or intangible, in connection with the merger.

12 CFR 584.4(b)(2)

§ 584.4 Acquisitions.

(a) *Acquisitions by a savings and loan holding company.* No savings and loan holding company, directly or indirectly, or through one or more subsidiaries or through one or more transactions, shall:

(1) Acquire, except with the prior written approval of the Corporation, the control of an insured institution or a savings and loan holding company, or retain the control of such an institution or holding company acquired or retained in violation of section 408 of the National Housing Act as heretofore or hereafter in effect;

(2) Acquire, except with the prior written approval of the Corporation, by the process of merger, consolidation or purchase of assets, another insured or uninsured institution, or a savings and loan holding company, or all or substantially all of the assets of any such institution or holding company;

(3) Acquire by purchase or otherwise any of the voting shares of an insured institution not a subsidary, or of a savings and loan holding company not a subsidiary, or, in the case of a multiple savings and loan holding company, so acquire or retain more than 5 percent of the voting shares of any company that is not a subsidiary and that is engaged in any business activity other than those specified in paragraphs (b) of § 584.2 or § 584.2-1; or

(4) Acquire control of an uninsured institution or retain, for more than one year after the date any insured institution becomes uninsured, control of such institution.

(b) *Acquisition by any other company.* No company (not a savings and loan holding company) shall, without the prior written approval of the Corporation, directly or indirectly, or through one or more subsidiaries or through one or more transactions, acquire the control of one or more insured institutions, except that such approval shall not be required in connection with the control of an insured institution: (1) Acquired by devise under the terms of a will creating a trust which is excluded from the definition of "savings and loan holding company" under § 583.11 of this subchapter or (2) acquired in connection with a reorganization in which a person or group of persons, having had control of an insured institution for more than 3 years, vests control of that institution in a newly formed holding company subject to the control of the same person or group of persons. The Corporation will approve an acquisition of an insured institution under this paragraph unless it finds the financial and managerial resources and future prospects of the company and institution involved to be such that the acquisition would be detrimental to the institution or the insurance risk of the Corporation, and will render its decision within 90 days after submission to the Board of the complete record on the application.

(c) *Decision by the Corporation.* The Corporation will not approve any acquisition under paragraph (a)(1) and (2) of this section, or of more than one insured institution under paragraph (b) of this section except in accordance with this paragraph. In every case, the Corporation will take into consideration the financial and managerial resources and future prospects of the company and institution involved, and the convenience and needs of the community to be served, and will render its decision within 90 days after submission to the Board of the complete record on the application. Before approving any such acquisition, the Corporation will request from the Attorney General and consider any report rendered within 30 days on the competitive factors involved. The Corporation will not approve any proposed acquisition:

(1) Which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States; or

(2) The effect of which in any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the